

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SHAWN P. MANNING,

Petitioner,

v.

Civ. Action No. 1:17-cv-182
(Kleeh)

S. KALLIS, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 33]

On October 17, 2017, the pro se Petitioner, Shawn P. Manning ("Petitioner"), filed a Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241, challenging the legality of his career offender sentence. [ECF No. 1].¹ Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On August 5, 2020, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the Petition without prejudice for lack of jurisdiction. [ECF No. 33].

The R&R also informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such

¹ Petitioner refiled a signed copy of the petition on October 30, 2017. [ECF No. 7].

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objection.” It further warned them that the “[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals.” The docket reflects that Petitioner accepted service of the R&R on August 10, 2020. [See ECF No. 34]. To date, no objections have been filed.

When reviewing a magistrate judge’s R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, “the Court may adopt, without explanation, any of the magistrate judge’s recommendations” to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603–04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 33]. The petition is **DENIED** and **DISMISSED WITHOUT PREJUDICE**. The Court **ORDERS** that this matter be **STRICKEN** from the Court’s active docket and **DIRECTS** the Clerk to enter a separate judgment order.

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It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to
Petitioner via certified mail, return receipt requested.

DATED: January 11, 2021

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE